



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request
for Opinion Concerning the
Conduct of CATHERINE CORTEZ MASTO,
Attorney General,
State of Nevada,

Request for Opinion No.: 09-03C

Subject.

**EXECUTIVE DIRECTOR'S APPROVAL OF INVESTIGATOR'S REPORT
AND EXECUTIVE DIRECTOR'S RECOMMENDATION**

The following is the Executive Director's recommendation based on the Investigator's Report.

An Ethics Complaint was filed against the Attorney General of Nevada CATHERINE CORTEZ MASTO (Masto), a public officer. The Investigator sent MASTO a Notice of Additional Issues and Facts and she responded to all of the allegations.

Allegations:

The main allegation is about Masto and certain of her deputies' involvement with the Nevada Board of Homeopathic Medical Examiners (NBHME). After being contacted by State Senator Michael Schneider (Schneider), Masto took an interest the issuance of subpoenas from her office on Daniel Royal and Dean Friesen (Friesen) on or about April 10, 2007. And at Schneider's request, she directed certain deputies to investigate the NBHME's actions on the temporary suspension of Daniel Royal's homeopathic license in September and October 2007.

Facts:

The main parties involved are: Catherine Cortez Masto, Attorney General; Michael Schneider, State Senator; Daniel Royal, homeopathic physician; Dean Friesen, unlicensed pharmacist.

The Attorney General's office was investigating Royal for allowing an unlicensed person (Friesen) to practice homeopathy in his facility. Apparently, Masto was unaware of the investigation, until Schneider contacted her about some subpoenas attempted to be served on Daniel Royal and Friesen at the Legislature in April 2007. Declaration of Masto, pp. 2-3.

In September 2007, the NBHME temporarily suspended Daniel Royal's license on a complaint that Royal allowed an unlicensed person (Friesen) to practice homeopathy in his facility. The complaint was filed in 2006. Exhibit A, Index to Response by Masto.

On October 2007, Schneider again contacted Masto regarding Daniel Royal and Friesen over the temporary suspension of Royal's license. Masto and her deputy Christi Guersi-Nyhus met with Schneider. Afterwards, Guerci-Nyhus prepared a memorandum of the situation. Masto consulted other staff members and directed Guerci-Nyhus to proceed to cancel the temporary suspension by calling a "non meeting" and emergency meeting of the NHBME. Declaration of Masto, p.4. The meeting was held on October 18, 2007 and the suspension of Daniel Royal's license was vacated.

Nevada Revised Statutes (NRS):

The applicable statutes are NRS 281A.400.2, NRS 281A.400.7 and NRS 281A.400.9. Pursuant to NRS 281A.400.2, MASTO may not use her position as Attorney General to secure an unwarranted privilege, exemption or advantage for herself or any person to whom she has a commitment in a private capacity to that person. Under NRS 281A.400.2 (b), "unwarranted" means without adequate reason or justification. A "commitment in a private capacity to the interests of others" means a commitment to a person: (a) who is a member of his household; (b) who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity; (c) who employs him or a member of his household; (d) with whom he has a substantial and continuing business relationship; or (e) any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

Recommendation:

After reviewing the evidence and NRS 281A.400.2, NRS 281A.400.7 and NRS 281A.400.9, the recommendation is that the Panel find just and sufficient cause DOES NOT EXIST for the Commission to render an opinion on the allegations that MASTO used her position as Attorney General to secure unwarranted privileges or exemption for herself or others, or used government property, equipment or a subordinate for her personal benefit.

Analysis:

The purpose of the Nevada Ethics in Government Law is to hold public officials accountable to the public they serve. Such officials should not use their positions to benefit themselves or those with whom they have a close relationship. Therefore, the first determination that the Panel must make is whether Masto had a close relationship with Michael Schneider, Daniel Royal or Dean Friesen. If not, then, none of Masto's actions on the NBHME alleged to have benefited those three individuals violated NRS 281A.400.2.

The evidence uncovered in the investigation is that Masto has no private relationship or commitment to any of the men mentioned above. Masto admitted to a passing acquaintance with Schneider and to speaking with him on the telephone about some subpoenas attempted to be served on Daniel Royal and Friesen. She also admitted to meeting with Schneider on the NBHME's actions, a courtesy she extended to dozens of other people. Masto denied any contact with Daniel Royal or Friesen. Declaration of Masto, pp. 2-5.

Based on Schneider's requests, Masto inquired into the way Daniel Royal's license was temporarily suspended for an allegation that he allowed an unlicensed person (Friesen) to practice homeopathy without a license in Royal's facility. At her direction, her deputy Christi Guersi-Nyhus investigated the situation and recommended how the suspension

would be handled. This decision resulted in the subsequent calling of the emergency meeting of the NBHME and ultimately meant that Daniel Royal kept his license. Complaint, Exhibit 13.

The way Masto and her deputies handled the temporary suspension of Daniel Royal's homeopathic license is puzzling. The NBHME complaint against Daniel Royal was filed in 2006. On September 15, 2007, the NBHME temporarily suspended his license. On October 8 or 9, 2007, Schneider requested an appointment and met with Masto to discuss the suspension. Masto's deputy Guerci-Nyhus also attended the meeting. Although Masto made no promises to Schneider, she directed Guerci-Nyhus to investigate.

Guerci-Nyhus prepared a Memorandum for Masto's review, dated October 15, 2007. Exhibit C, Index of Exhibits in Response by Catherine Cortez Masto. Apparently, Guerci-Nyhus recommended to and Masto agreed that the best plan of action was to call a "non meeting" of the NBHME to discuss potential litigation, including the possibility of personal liability of board members if they suspended Daniel Royal's license permanently. The "non meeting" was to be followed by an "emergency" meeting of the NBHME on October 18, 2007 to decide Daniel Royal's license.

Masto or Guerci-Nyhus never consulted George Taylor, the "acknowledged expert" on the Open Meeting Law in Masto's office. Declaration of Masto, pp. 3-6. The emergency agenda of the October 18, 2007 meeting does not state when it was posted. According to Nancy Ecklof the Executive Director of the NBHME, on October 17, 2007 she was advised to post the agenda on the morning of October 18, 2007. Exhibit 14 of the Complaint. The agenda should have been posted at the earliest time possible, according to the Attorney General's Open Meeting Law Manual, p. 47.

Moreover, the minutes of the "emergency" meeting do not reflect the nature of the emergency, a requirement found in the Attorney General's Open Meeting Law Manual, p. 46. Finally, "emergency" is defined in NRS 241.020 and a threat of litigation is not a basis for calling an emergency meeting. If the law had been followed, the public would have had more notice of the meeting that actions would to be taken on Daniel Royal's license. The question remains why Masto rushed to judgment, apparently relied on a deputy, who was not the "acknowledged expert" on the Open Meeting Law in her office, and agreed to a process on holding the NBHME meeting on October 18, 2007 that appears to violate the Open Meeting Law and her Manual. Why was the decision made in such a way to make sure the public had little notice of the NBHME's actions on Daniel Royal's license?

The extent to which Masto and Guersi-Nyhus went to prevent a hearing on Daniel Royal's license was broad. Guersi-Nyhus even hired the hearings officer Ann Pongracz, who had accepted the position to hear the matter, as a deputy attorney general. Guersi-Nyhus even told Pongracz as a condition of being hired she could not remain on the Royal case. Declaration of Pongracz. p.2.

Masto's other involvement in the Daniel Royal licensing is her conduct on the subpoenas Schneider contacted her about. The subpoenas for Daniel Royal and Friesen were to obtain the records to prove whether Friesen was practicing without a license in Daniel Royal's facility. She denied she knew about the investigation. Declaration of Masto, pp. 2-3. Apparently, the subpoenaed materials were returned to Daniel Royal without the Attorney

General pursuing the matter.

Clearly, Schneider's contact with Masto resulted in her decisions that led to Daniel Royal keeping his license, but because Masto had no close relationship with any of the parties, the allegations that Masto violated NRS 281A.400.2 must be dismissed.

The second determination that the Panel must make is whether Masto received a personal benefit from her conduct. As to the use of her position, or of government time and property or of attempting to influence a subordinate for her personal or financial benefit, the evidence uncovered by the investigator does not show that Masto received any personal or financial benefit from her involvement with Schneider, Daniel Royal, Friesen or the NBHME. Therefore, the allegations that Masto violated NRS 281A.400.7 and NRS 281A.440.9 must be dismissed.

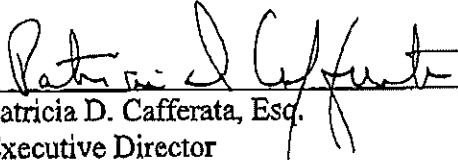
The third determination that the Panel must make is on whether Masto violated NRS 281A.400.2 by exempting her office from the Open Meeting Law requirements when the NBHME meeting was held on October 18, 2007. The intent of the Open Meeting Law is that public bodies take actions openly and conduct their deliberations in public. NRS 241.010. There is no financial benefit to Masto for the alleged violations, and the personal benefit for her is being spared a embarrassing mention in the public of the violations.

The final determination that the Panel must make is whether Masto violated NRS 281A.400.2 when she allegedly quashed or arranged the dismissal of the Open Meeting Law complaints filed after the October 18, 2007 meeting. Taylor dismissed these complaints and Masto was unaware of them until she read the ethics complaint filed against her in this case. Therefore, she could not have benefited herself on the dismissals and the allegation that Masto violated NRS 281A.400.2 must be dismissed.

Conclusion:

Therefore, the recommendation is that the Panel find that just and sufficient cause **DOES NOT EXISTS** for the Commission to render an opinion on whether MASTO violated NRS 281A.400.2, NRS 281A.400.7 or NRS 281A.400.9.

Approval of Investigator's Report and Executive Director's Recommendation:

 Dated: February 26, 2009
Patricia D. Cafferata, Esq.
Executive Director